

§ 123.45 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly, semi-annual, and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit all reports required under this section to the Regional Administrator, and the EPA Region in turn shall submit the State reports to EPA Headquarters. When EPA is the permit-issuing authority, the Regional Administrator shall submit all reports required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major permittees as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list of major NPDES permittees which shall be sub-categorized as non-POTWs, POTWs, and Federal permittees.

(ii) Alphabetize each list by permittee name. When two or more permittees have the same name, the permittee with the lowest permit number shall be entered first.

(iii) For each permittee on the list, include the following information in the following order:

(A) The name, location, and permit number.

(B) A brief description and date of each instance of noncompliance for which paragraph (a)(2) of this section requires reporting. Each listing shall indicate each specific provision of paragraph (a)(2) (e.g., (ii)(A) thru (iii)(G)) which describes the reason for reporting the violation on the quarterly report.

(C) The date(s), and a brief description of the action(s) taken by the Director to ensure compliance.

(D) The status of the instance(s) of noncompliance and the date non-compliance was resolved.

(E) Any details which tend to explain or mitigate the instance(s) of non-compliance.

(2) *Instances of noncompliance by major dischargers to be reported—(i) General.* Instances of noncompliance, as defined in paragraphs (a)(2)(ii) and (iii) of this section, by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved

(i.e., the permittee is no longer violating the permit conditions reported as noncompliance in the QNCR). Once an instance of noncompliance is reported as resolved in the QNCR, it need not appear in subsequent reports.

(A) All reported violations must be listed on the QNCR for the reporting period when the violation occurred, even if the violation is resolved during that reporting period.

(B) All permittees under current enforcement orders (i.e., administrative and judicial orders and consent decrees) for previous instances of non-compliance must be listed in the QNCR until the orders have been satisfied in full and the permittee is in compliance with permit conditions. If the permittee is in compliance with the enforcement order, but has not achieved full compliance with permit conditions, the compliance status shall be reported as “resolved pending,” but the permittee will continue to be listed on the QNCR.

(ii) *Category I noncompliance.* The following instances of noncompliance by major dischargers are Category I non-compliance:

(A) Violations of conditions in enforcement orders except compliance schedules and reports.

(B) Violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or a permit.

(C) Violations of permit effluent limits that exceed the Appendix A “Criteria for Noncompliance Reporting in the NPDES Program”.

(D) Failure to provide a compliance schedule report for final compliance or a monitoring report. This applies when the permittee has failed to submit a final compliance schedule progress report, pretreatment report, or a Discharge Monitoring Report within 30 days from the due date specified in an enforcement order or a permit.

(iii) *Category II noncompliance.* Category II noncompliance includes violations of permit conditions which the Agency believes to be of substantial

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concern and may not meet the Category I criteria. The following are instances of noncompliance which must be reported as Category II noncompliance unless the same violation meets the criteria for Category I noncompliance:

- (A) (1) Violation of a permit limit;
- (2) An unauthorized bypass;
- (3) An unpermitted discharge; or
- (4) A pass-through of pollutants which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial uses).

(B) Failure of an approved POTW to implement its approved pretreatment program adequately including failure to enforce industrial pretreatment requirements on industrial users as required in the approved program.

(C) Violations of any compliance schedule milestones (except those milestones listed in paragraph (a)(2)(ii)(B) of this section) by 90 days or more from the date specified in an enforcement order or a permit.

(D) Failure of the permittee to provide reports (other than those reports listed in paragraph (a)(2)(ii)(D) of this section) within 30 days from the due date specified in an enforcement order or a permit.

(E) Instances when the required reports provided by the permittee are so deficient or incomplete as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(F) Violations of narrative requirements (e.g., requirements to develop Spill Prevention Control and Countermeasure Plans and requirements to implement Best Management Practices), which are of substantial concern to the regulatory agency.

(G) Any other violation or group of permit violations which the Director or Regional Administrator considers to be of substantial concern.

(b) *Semi-annual statistical summary report.* Summary information shall be provided twice a year on the number of major permittees with two or more violations of the same monthly average permit limitation in a six month period, including those otherwise reported under paragraph (a) of this sec-

tion. This report shall be submitted at the same time, according to the Federal fiscal year calendar, as the first and third quarter QNCRs.

(c) *Annual reports for NPDES*—(1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor NPDES permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) A separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule shall also be submitted in alphabetical order by name and permit number.

(d) *Schedule*—(1) *For all quarterly reports.* On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule:

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR DISCHARGERS:

[Date for completion of reports]	
January, February, and March	¹ May 31
April, May, and June	¹ August 31
July, August, and September	¹ November 30
October, November, and December	¹ February 28

¹ Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

APPENDIX A TO § 123.45— CRITERIA FOR NONCOMPLIANCE REPORTING IN THE NPDES PROGRAM

This appendix describes the criteria for reporting violations of NPDES permit effluent limits in the quarterly noncompliance report (QNCR) as specified under § 123.45(a)(2)(ii)(c). Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which

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the permittee is liable. An agency's decision as to what enforcement action, if any, should be taken in such cases, will be based on an analysis of facts and legal requirements.

Violations of Permit Effluent Limits

Cases in which violations of permit effluent limits must be reported depend upon the magnitude and/or frequency of the violation. Effluent violations should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Violations of Monthly Average Permit Limits—Magnitude and Frequency

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants—TRC=1.4

Group II Pollutants—TRC=1.2

b. Reporting Criteria for Chronic Violations of Monthly Average Limits

Chronic violations must be reported in the QNCR if the monthly average permit limits are exceeded any four months in a six-month period. These criteria apply to all Group I and Group II pollutants.

GROUP I POLLUTANTS—TRC=1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium

40 CFR Ch. I (7–1–04 Edition)

Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

GROUP II POLLUTANTS—TRC=1.2

METALS (ALL FORMS)

Other metals not specifically listed under Group I

Inorganic

Cyanide
Total Residual Chlorine

Organics

All organics are Group II except those specifically listed under Group I.

(Approved by the Office of Management and Budget under control number 2040–0082)

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§ 123.46 Individual control strategies.

(a) Not later than February 4, 1989, each State shall submit to the Regional Administrator for review, approval, and implementation an individual control strategy for each point source identified by the State pursuant to section 304(l)(1)(C) of the Act which discharges to a water identified by the State pursuant to section 304(l)(1)(B) which will produce a reduction in the discharge of toxic pollutants from the point sources identified under section 304(l)(1)(C) through the establishment of effluent limitations under section 402 of the CWA and water quality standards under section 303(c)(2)(B) of the CWA, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of establishment of such strategy.

(b) The Administrator shall approve or disapprove the control strategies submitted by any State pursuant to paragraph (a) of this section, not later than June 4, 1989. If a State fails to